

***SAMPLE LEASE (IMPROVEMENTS)***

**Draft: 9/11/07, Updated 11/1/12**



**LEASE**

**BETWEEN THE**

**UNITED STATES DEPARTMENT OF INTERIOR  
NATIONAL PARK SERVICE  
(LESSOR)**

**AND**

\_\_\_\_\_  
**(LESSEE)**

\_\_\_\_\_  
\_\_\_\_\_  
**PARK  
LEASE**

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## LEASE

**THIS LEASE** is made and entered into by and between the United States Department of the Interior, acting through the National Park Service, an agency of the United States of America (Lessor), and \_\_\_\_\_, (Lessee).

### WITNESSETH THAT:

**WHEREAS**, Congress designated \_\_\_[name of Park Area] \_\_\_\_\_  
\_\_\_\_\_ (Park Area) as a unit of the National Park System; and

**WHEREAS**, the Park Area contains property (the Premises) that has been determined suitable for leasing under 36 C.F.R. Part 18 (Part 18); and

**WHEREAS**, the Lessor has determined that the use and occupancy of the Premises that is made available under this Lease is consistent with the Park Area's General Management Plan and the requirements of Part 18; and

**WHEREAS**, the Lessee desires to lease the Premises on the terms and conditions set forth in this Lease; and

**NOW THEREFORE**, in consideration of their mutual promises, the Lessor and Lessee hereby agree as follows:

### SECTION 1. DEFINITIONS

As used in this Lease, the following defined terms are applicable to both singular and plural forms.

**1.1 Affiliate of Lessee** - means any person or entity directly or indirectly controlling, controlled by, or under common control with Lessee, or, any entity owned in whole or part, directly or indirectly, by Lessee.

**1.2 Alterations** – means any construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises other than Initial Improvements.

**1.3 Applicable Laws** – means all present and future laws, statutes, requirements, ordinances, judgments, regulations, and administrative and judicial determinations (that are applicable by their own terms to the Premises or the Lessee), even if unforeseen or extraordinary, of every governmental or quasi-governmental authority, court or agency claiming jurisdiction over the Premises now or hereafter enacted or in effect (including, but not limited to, Part 18 and the Park Area's General Management Plan, environmental laws and those relating to accessibility to, usability by, and discrimination against, disabled individuals), and all covenants, restrictions, and conditions now or hereafter of record which may be applicable to the Lessee or to all or any portion of the Premises, or to the use, occupancy, possession, operation, maintenance, Alteration, repair or restoration of any portion of the Premises, even if compliance therewith necessitates structural changes to the Premises or results in interference with the use or enjoyment of all or any portion of the Premises.

**1.4 Annual Rent** – means the annual fixed rent to be paid to Lessor by Lessee under Section 5.

**1.5 Assignment** - means the transfer, whether it is direct or indirect, voluntary or by operation of law, assignment, sale, or conveyance, of the Lessee's leasehold estate, or the Lessee's rights under this Lease in whole or part. Such transfer may be designated as a sale, a conveyance, or an assignment. The sale, conveyance, or assignment (including by consolidation, merger or reorganization) of a controlling interest in the Lessee (if such entity is a corporation), or any sale or other transfer of a controlling interest in the partnership interests (if such entity is a partnership), whether in a single transfer or in a series of related transfers, and whether directly or by sales or transfers of underlying partnership or corporate ownership interests, is an Assignment. For a corporate entity, the term "controlling interest" means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee. For a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneur, "controlling interest" means the beneficial ownership of the capital assets of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee.

**1.6 Commencement Date** – means the first day of the Lease term as stated in Section 4 of this Lease.

**1.7 Construction Documents** – refers collectively to all drawings, plans, specifications, and similar documents associated with the construction of Improvements on the Premises.

**1.8 Encumbrance** – means the direct or indirect, voluntary or by operation of law, encumbrance, pledge, mortgage, or other hypothecation of the Lessee's interest or rights under this Lease and/or the Premises or Lessee's leasehold estate.

**1.9 Expiration Date** – means the last day of the Lease Term as stated in Section 4 of this Lease.

**1.10 FF&E** – means all furniture, fixtures and equipment in or on the Premises.

**1.11 Hazardous Materials** – means any material or other substance: (a) that requires investigation or correction under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that, without limitation of the foregoing, contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that, without limitation of the foregoing, contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) without limitation of the foregoing, contains radon gas. The term Hazardous Materials as used in this Lease includes Pre-Existing Hazardous Materials unless otherwise stated in a particular provision of this Lease.

**1.12 Hazardous Materials Occurrence** – means any use, treatment, keeping, storage, sale, release, disposal, migration, transport, or discharge of any Hazardous Materials from, on, under, or into the Premises or other Park Area property that occurs during the Lease Term.

**1.13 Historic Property** – means building(s) and land located within the boundaries of the Park Area that are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

**1.14 Improvements** – refers collectively to any Alterations and Initial Improvements.

**1.15 Initial Improvements** – means the construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises as may be described in Section 8 of this Lease that the Lessee is required to make at the commencement of this Lease.

**1.16 Interest Rate** – means the percentage of interest charged based on the current value of funds to the United States Treasury that is published annually in the Federal Register or successor publication.

**1.17 Inventory and Condition Report** – means the document contained in Exhibit B to this Lease that describes the FF&E in or on the Premises and the condition of the Premises (including FF&E) as of the Commencement Date.

**1.18 Lease Term** – is the term of this Lease as stated in Section 4 of this Lease.

**1.19 Lease Year** – means a year of the Lease Term. The first Lease Year shall commence on the Commencement Date and shall end on the expiration of the twelfth full calendar month following thereafter. Each subsequent Lease Year shall commence on the next day following the expiration of the preceding Lease Year, and shall end on the expiration of the twelfth full calendar month following thereafter, or on the last day of the Lease Term, whichever occurs first.

**1.20 Notice of Default** – means an instrument in writing from the Lessor to the Lessee providing notice that the Lessee is in default of the Lease.

**1.21 NPS 28** - means the National Park Service (NPS) document entitled “Cultural Resource Management Guideline” which is hereby made a part of this Lease by reference.

**1.22 Park Area** - means [state the name of the Park Area].

**1.23 Part 18** – means Part 18 of Title 36 of the Code of Federal Regulations.

**1.24 Personal Property** – means all FF&E, appliances, and apparatus placed in or on the Premises that are neither permanently attached to nor form a part of the Premises.

**1.25 Pre-existing Hazardous Materials** – means Hazardous Materials (including storage tanks) that existed in, on, or under the Premises or other Park Area property prior to the Commencement Date.

**1.26 Premises** – means the property of the Park Area that is described in Section 2 of this Lease.

**1.27 Preservation Maintenance Plan** – is a document that sets forth a plan for the Lessee’s repair and maintenance of Historic Property.

**1.28 Rent** - means the rent to be paid Lessor by Lessee described in Section 5 of this Lease and any additional Rent this Lease may require.

**1.29 Secretary’s Treatment Standards** – means the Secretary of the Interior’s Treatment Standards for Historic Property (36 C.F.R. Part 68) that are hereby made a part of this Lease by reference.

**1.30 Sublease** - means an agreement under which the Lessee grants a person or entity (a Sublessee) the right to use, occupy, or possess a portion of the Premises.

**1.31 Termination Date** – means the date this Lease may be terminated or cancelled in accordance with its terms prior to the Expiration Date.

## **SECTION 2. LEASE OF PREMISES**

## **2.1 Lease of Premises; Reservation of Rights**

(a) The Lessor hereby leases and demises to the Lessee under the authority of Part 18, and the Lessee hereby leases, upon and subject to the covenants and agreements contained in this Lease, from the Lessor, the Premises described as follows:

[Address and Description of the leased property]

(b) Subject to all Applicable Laws, regulations and all liens, Encumbrances, restrictions, rights and conditions of law or of record or otherwise;

(c) Excepting and reserving to the Lessor the right, at reasonable times and (except in case of emergency) following advance notice to the Lessee, to enter and to permit any governmental agency, public or private utilities and other persons to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life or property is discovered; and

(d) Excepting and reserving exclusive rights to all oil, gas, hydrocarbons, and other minerals in, under, or on the Premises and ownership of any current or future water rights applicable to the Premises.

(e) Executive Order 13658- Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract as if fully set forth in this contract. The applicable contract clause is available at <https://federalregister.gov/a/2014-23533>.

## **2.2 Waiver**

The Lessee hereby waives any claims for damages for any injury or inconvenience to or interference with the Lessee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by the Lessor's exercise of its rights under this Lease or by the Lessor's actions taken for the management and protection of the Park Area's resources and visitors.

## **2.3 Easements**

Nothing contained in this Lease shall give or be deemed to give the Lessee a right to grant any type of easement or right-of-way affecting the Premises. Lessor agrees to execute, if otherwise appropriate as determined by the Lessor, such easements for utilities as Lessee shall require in connection with the use and operation of the Premises.

## **2.4 Ownership of the Premises**

This Lease does not vest in the Lessee any fee interest in the Premises. Title to the Premises at all times is with and shall remain solely with the Lessor.

## **2.5 Historic Property**

The Premises (or portions of the Premises) [are] [are not] Historic Property.

[Delete the inapplicable bracketed statement and remove the brackets from the remaining one.]

## **SECTION 3. Acceptance of the Premises**

### **3.1 As Is Condition of the Premises**

The Lessee agrees to lease the Premises in their existing “as is” condition and acknowledges that in entering into this Lease, the Lessee does not rely on, and the Lessor does not make, any express or implied representations or warranties as to any matters including, without limitation, any characteristics of the Premises or Improvements thereon, the suitability of the Premises for the intended use, the likelihood of deriving trade from or other characteristics of the Park Area, the economic or programmatic feasibility of the Lessee’s use and occupancy of the Premises, or Hazardous Materials on or in the vicinity of the Premises.

### **3.2 Lessee’s Due Diligence**

Prior to entering into this Lease, the Lessee in the exercise of due diligence has made a thorough, independent examination of the Premises and all matters relevant to the Lessee’s decision to enter into this Lease, and the Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that it is in an acceptable condition and meets the Lessee’s needs.

### **3.3 Inventory and Condition Report**

In the exercise of its due diligence, Lessee has taken into account the Inventory and Condition Report (Exhibit B) and acknowledges that it is complete and accurate.

## **SECTION 4. LEASE TERM AND ABANDONMENT**

### **4.1 Lease Term**

The Lease Term shall be a period of \_\_\_\_\_ ( ) years commencing on \_\_\_\_\_ (Commencement Date) and expiring on \_\_\_\_\_ (Expiration Date) or ending on such earlier date as this Lease may be terminated in accordance with its terms (Termination Date); provided, however, that if the Lessee fails to timely complete Initial Improvements in accordance with the Construction Documents, this Lease shall be for a term of \_\_\_\_\_ ( ) years, expiring on \_\_\_\_\_ unless terminated earlier in accordance with its terms.

### **4.2 Abandonment**

The Lessee shall occupy the Premises during the entire Lease Term. If it fails to do so, the Lessee may be determined as in default for abandoning the Premises. Occupancy is not required if the Lessor determines it infeasible because of the construction of Improvements.

## **SECTION 5. RENT**

### **5.1 Net Lease and Rent Payments**

(a) All Rent shall be absolutely net to Lessor without any abatement, deduction, counterclaim, set-off or offset. Lessee shall pay all costs, expenses and charges of every kind and nature relating to the Premises, including, without limitation, all taxes and assessments.

(b) All Rent payments consisting of \$10,000 per payment or more shall be deposited electronically by the Lessee using the Treasury Financial Communications System. At Lessor’s option, Rent payments shall be payable by wire transfer or other electronic means to such

account as Lessor may from time to time designate. Interest at the Interest Rate will be assessed on overdue Rent payments. The Lessor may also impose penalties for late Rent payments to the extent authorized by Applicable Law.

## **5.2 Annual Rent**

During the Lease Term, Lessee shall pay to Lessor Annual Rent for the Premises in the aggregate annual amount of \$\_\_\_\_\_ (\$ ) (as adjusted for CPI if provided below) payable in advance in equal monthly installments on the first day of each calendar month.

**5.3 Consumer Price Index Adjustment** *[May be deleted for leases with a term of less than five years.]* The Annual Rent will increase on the first day of the second Lease Year and annually thereafter during the Lease Term to reflect any the proportionate cumulative increase in the Consumer Price Index (CPI), during the previous Lease Year. For purposes of this Section, CPI means the United States Department of Labor, Bureau of Labor Statistics, All Urban Consumers Price Index – All Items (Base Period 1982-84=100) *[or insert Index specific to city or geographic region of the lease]*, or if such index is no longer published, a successor or substitute index designated by the Lessor, that shows changes in consumer prices in the locale of the Park Area.

Adjustments to the Annual Rent shall be determined by multiplying the Annual Rent stated in Section 5.2 by the CPI index number for the month which is four months prior to the date of adjustment and dividing by the CPI index number for the month and year of the Commencement Date, and rounding the result to the nearest dollar. If the result of this formula is greater than the minimum Annual Rent set forth in Section 5.2, Lessee shall pay this greater amount as the yearly rent until the time of the next annual rental adjustment. If the product of the multiplication is less than the minimum Annual Rent, there shall be no adjustment in the yearly rent at that time and Lessee shall pay the Annual Rent set forth in Section 5.2 until the time of the next annual rental adjustment. In no event shall any rental adjustment called for in this Section result in an Annual Rent less than the Annual Rent state is Section 5.2.

## **5.4 Percentage Rent**

(a) In addition to Annual Rent, the Lessee shall pay to the Lessor as percentage rent an amount of money equal to \_\_\_\_% of the Lessee's Gross Revenues for the preceding month of the Lease Term. The percentage rent shall be due on a monthly basis at the end of each month of the applicable Lease Year during the Lease Term and shall be paid by the Lessee within fifteen (15) calendar days after the last day of the applicable month.

(b) Gross Revenues means the entire amount of Lessee's revenues (and the revenues of any Affiliate of Lessee) derived from this Lease or any Sublease hereunder, such amount as determined in accordance with generally accepted accounting principles consistently applied. Gross revenues include, as applicable and without limitation, rent paid by Tenants, Tenant payments in lieu of rent, Tenant reimbursements, and payments under a loss of rents insurance policy or provision. Also included in Gross Revenues are receipts from all mechanical or other vending devices placed on the Premises by the Lessee or under authority from the Lessee.

**5.5 Rent Reconsideration** *[May be deleted in leases with a term less than fifteen years.]*

(a) The Rent otherwise required by this Lease shall be subject to reconsideration at the request of the Lessor or the Lessee after the end of the \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ Lease Years of this Lease in order to maintain the Rent under this Lease in an amount and structure consistent with fair market value rent. "Fair market value rent" for the purposes of this Section means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the Premises, under the terms and conditions of this Lease, should rent for their highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the Lessor and the Lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

(b) To request Rent reconsideration, the Lessor or Lessee must notify the other party in writing of its request within sixty (60) days after the end of the applicable Lease Year. Upon receipt of such notice, the Lessor and Lessee must negotiate in good faith a Rent adjustment. If, after the end of such sixty (60) day negotiation period, agreement as to a possible Rent adjustment has not been reached, either party may request that the matter be resolved by binding arbitration conducted by an arbitration panel. Such request must be made by written notice to the other party within thirty (30) days of the end of the negotiation period.

(c) One member of the arbitration panel is to be selected by the Lessor, one member is to be selected by the Lessee, and the two party-appointed members are to select the third (neutral) member. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Lessor and the Lessee. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. A Rent adjustment determination must be made by a majority of the members of the panel and will be binding on the Lessor and the Lessee. The arbitration panel will determine an appropriate adjustment to Rent, if any, to reflect fair market value rent effective as of the beginning of the \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_ Lease Year, as applicable.

## **SECTION 6. USE OF PREMISES**

### **6.1 Authorized Uses**

The Lessee may utilize the Premises only for the following:  
[Describe authorized uses.]

### **6.2 Changes to Authorized Uses**

The Lessee may amend or change approved uses subject to the prior written approval of the Lessor. No change of the uses of the Premises shall be approved unless the Lessor, among other matters, determines the proposed use to be consistent with Part 18, the Park Area's General Management Plan, all other Applicable Laws, and that the proposed change will not have an adverse impact on the Lessor's ability to manage and protect the Park Area's resources and visitors.

### **6.3 Applicable Laws**

The Lessee shall comply with all Applicable Laws in its use and occupancy of the Premises.

### **6.4 Forbidden Uses**

In no event shall the Premises be used for any purpose that is not permissible under Part 18 or, even if so permissible, may be dangerous to life, limb, property or public health; that in any manner causes or results in a nuisance; that is of a nature that it involves substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode, or that otherwise harms the health or welfare of Park Area resources and/or visitors; or that results in any discharge of Hazardous Materials in, on or under the Premises.

#### **6.5 Site Disturbance**

Lessee shall neither cut any timber nor remove any other landscape features of the Premises such as shrubs or bushes without Lessor's prior written consent. The Lessee shall conduct no mining or drilling operations, remove no sand, gravel or similar substances from the ground, and commit no waste of any kind.

#### **6.6 Protection of Cultural and Archeological Resources**

The Lessee shall ensure that any protected sites and archeological resources within the Park Area are not disturbed or damaged by the Lessee except in accordance with Applicable Laws and only with the prior written approval of the Lessor. Discoveries of any archeological resources by the Lessee shall be promptly reported to the Lessor. The Lessee shall cease work or other disturbance, which may impact any protected site or archeological resource until the Lessor may grant approval to continue upon such terms and conditions as the Lessor deems necessary to protect the site or resource.

#### **6.7 Signs**

The Lessee may not post signs on the Premises of any nature without the Lessor's prior written approval. Any approval of a sign that may be given by the Lessor shall specify the type, size, and other appropriate conditions concerning its display. The Lessor may post signs on the Premises as appropriate for the administration of the Park Area.

#### **6.8 Permits and Approvals**

Except as otherwise may be provided in this Lease, the Lessee shall be solely responsible for obtaining, at its expense, any permit or other governmental action necessary to permit its activities under this Lease.

#### **6.9 Alterations**

The Lessee shall not make any Alterations of any nature to the Premises without the express written approval of the Lessor. Any such approval that may be given will be subject to an amendment of this Lease to incorporate appropriate terms and conditions regarding the nature of the Alterations and construction requirements, including, without limitation, construction insurance requirements.

### **Section 7. RECORDS AND AUDITS**

The Lessee shall provide the Lessor and its agents and affiliates, including without limitation, the Comptroller General of the United States, access to all books and records relating to the Premises and the Lessee's use of the Premises under this Lease for the purpose of conducting audits to verify the Lessee's compliance with the terms and conditions of this Lease for any of the five (5) preceding Lease Years. The Lessee shall keep and make available to the Lessor these books and

records at a location in the Premises or within the locale of the Park Area. The Lessee shall, if requested by the Lessor, provide the Lessor with complete information and data concerning the Lessee's operations and operating results, including without limitation, information and data regarding [specify particular types that relate to the Lessee's particular operations].

## **SECTION 8. INITIAL IMPROVEMENTS BY LESSEE**

If otherwise granted approval by the Lessor under the terms of this Lease, the Lessee hereby agrees to commence and engage diligently in the construction of the following Initial Improvements in accordance with Construction Documents approved by Lessor. The Lessee shall commence the construction of the Initial Improvements by \_\_\_\_\_ and shall complete construction by \_\_\_\_\_:

[Describe the Initial Improvements to be constructed. The description should be as detailed as possible and include a completion schedule and/or phasing schedule where applicable.]

## **SECTION 9. CONSTRUCTION APPROVAL**

### **9.1 In General**

All Improvements (Initial Improvements and Alterations), if any, shall be undertaken at the Lessee's sole expense and only with the Lessor's prior written approval. All work shall be performed in a good and workmanlike manner and with materials of at least the quality and standard of materials used in comparable facilities in the locale of the Park Area. The Lessee shall undertake Improvements in strict accordance with Applicable Laws and with approved Construction Documents. The Lessee shall, upon request, furnish the Lessor a correct copy of any contract with the Lessee's general contractor, architects, or consultants. The Lessor shall require the Lessee not to occupy specified portions of or all of the Premises during the construction of Improvements if determined by the Lessor as necessary for the protection of health or safety.

### **9.2 Enforced Delays**

The Lessee shall not be considered in default in the event of an enforced delay in the construction of Improvements due to unforeseeable causes beyond the Lessee's control and without any fault or negligence on the part of the Lessee. Such enforced delays include, without limitation, public enemies, war, invasion, insurrection, rebellion, riots, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather. In the event of an enforced delay, the time or times for construction of Improvements will be extended by the period of the enforced delay.

### **9.3 Utilities During Construction**

In the preparation of proposed Construction Documents, the Lessee shall review utility plans for the location of existing utilities that may be affected by any Lessee Improvements. The Lessee is required to obtain all necessary utility plans and permits from the appropriate public utility companies.

### **9.4 Site Inspection**

The Lessor shall be entitled to have on the Premises at any time during the construction of Improvements an inspector or representative who may observe all aspects of the work on the Premises. No inspection performed or not performed by the Lessor shall be deemed to give the Lessor any responsibility or liability with respect to the construction work, its prosecution or design, or, be deemed to constitute a waiver of any of the Lessee's obligations under this Lease or be construed as approval or acceptance of the Improvements (or portions thereof). The Lessee shall maintain on the Premises during construction, current, annotated Construction Documents for inspection by the Lessor.

### **9.5 Approval of Construction**

The Lessee must request in writing advance permission from the Lessor to undertake Improvements. The request must include:

- (a) proposed Construction Documents;
- (b) if required by the Lessor, evidence of the availability of funding for the Improvements;
- (c) documentation that required construction insurance is in effect; and
- (d) other information as may be required by the Lessor.

### **9.6 Construction Documents**

The proposed Construction Documents submitted to the Lessor must be complete and satisfactory to Lessor as showing all material elements of the Improvements. When proposed Construction Documents are approved by the Lessor, they become an Exhibit to this Lease without further action.

### **9.7 General Scope of Lessor's Review**

The Lessor will not approve proposed Construction Documents unless it is able to determine, among other matters, that the proposed Improvements are appropriate for the Park Area and consistent with the requirements of Part 18, the Park Area's General Management Plan and other Applicable Laws. Review and approval of proposed Improvements is subject to any required compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 et seq. and, if the project affects Historic Property, Section 106 of the National Historic Preservation Act (Section 106), 16 U.S.C. §470f).

### **9.8 Changes to Approved Construction Documents**

Any material change in the approved Construction Documents and any deviation in actual construction from these documents are subject to the Lessor's prior written approval under the procedures stated in this Section. An approved change order will be issued by Lessor if proposed changes are approved. The Lessee shall prepare and maintain on the Premises during construction, current, annotated Construction Documents.

### **9.9 Special Considerations for Historic Property**

If proposed Improvements relate to Historic Property, the Lessor will not approve proposed Construction Documents unless it is able to determine that they comply with the Secretary's Treatment Standards, NPS 28, and any conditions that may be imposed on the Improvements

through the operation of other Applicable Laws, including, without limitation, NEPA and Section 106.

#### **9.10 Evidence of Adequate Funds**

As a condition to the approval of the construction of Improvements, the Lessee must demonstrate to the satisfaction of the Lessor with appropriate documentation that it has available to it funds adequate to undertake and complete the project in accordance with all terms and conditions of the approved Construction Drawings.

#### **9.11 Building Permit**

Lessee shall not commence Improvements until such time as Lessor may issue a building permit as evidence of approval of the Construction Documents. The building permit shall contain necessary and appropriate terms and conditions for the construction of the Improvements.

#### **9.12 Construction Completion Procedures**

Upon completion of the Improvements, the Lessee shall submit to the Lessor (in formats specified by the Lessor):

- (a) a notice of completion;
- (b) if requested by Lessor, satisfactory evidence of the payment of all expenses, liabilities, and liens arising out of or in any way connected with the Improvements;
- (c) a complete set of “as built” drawings showing all revisions and substitutions during the construction period, including field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural member, walls, partitions and other significant features of the Improvements; and
- (d) a complete inventory of all FF&E in or on the Premises as of the completion of the Improvements.

Upon approval by the Lessor of the completion of the Improvements, the Lessor will issue a Certificate of Completion, including, authorization to occupy the Premises.

#### **9.13 Lessor’s Right to Utilize Construction Documents**

In the event of expiration or termination of this Lease, the Lessee shall assign and deliver to the Lessor as Lessor’s sole property all architectural, engineering and other plans, drawings, specifications and studies relating to the Premises. In order to assure Lessor that it will have the legal right to use such plans, drawings, specifications and the like if Lessor becomes entitled to such items, Lessee shall include in its agreements with the architects, engineers and other professionals who prepared such items and who have any proprietary rights with respect to such items (including the rights to use thereof in connection with the Premises) provisions whereby Lessee and Lessor shall have the right to use such plans and other materials in connection with the Premises. In furtherance and not in limitation thereof, Lessee (referred to below as “Owner”) shall include in such agreements the following provisions:

The drawings, specifications and other documents prepared by the Architect for this Project (“Documents”) are instruments of the Architect’s service and, unless

otherwise provided, the Architect shall be deemed the author of these Documents and shall retain all common law, statutory and other reserved rights, including the copyright. For the purpose of completing this Project or for any other purpose, Architect and its consultants hereby grant to Owner and the National Park Service an irrevocable, fully paid-up, perpetual, worldwide license to copy and use such Documents for completion of this Project or for any other purpose and consent to the use by Owner and the National Park Service, and of the modification by other design professionals retained by Owner and the National Park Service, of the Documents. The Architect will have no responsibility or liability to the Owner or the National Park Service with respect to any modification to the Documents made by the Owner or National Park Service or any other design professional retained by the Owner or National Park Service. Furthermore, except where the Architect is found to be liable for such claim, damage or loss, the Owner shall hold Architect harmless from any such claim, damage or loss arising out of the modification of the Documents by Owner or the National Park Service or another design professional. The Owner and the National Park Service shall be permitted to retain copies, including reproducible copies, of the Documents for information and reference in connection with the use and occupancy of the Project. Notwithstanding the foregoing, Architect acknowledges and consents to the use and ownership by the National Park Service, or its designees or assignees, of said plans and specifications in accordance with the Lease between the Owner (as Lessee) and the National Park Service (as Lessor) for the Premises leased to Lessee associated the Documents and Architect agrees to deliver copies of said plans and specifications to the National Park Service upon written request from the National Park Service, provided that the National Park Service agrees to pay the Architect's reasonable duplication expenses.

## **Section 10. MAINTENANCE AND REPAIR**

### **10.1 Lessee's Responsibilities**

The Lessee shall be solely responsible for the repair and maintenance of the Premises during the Lease Term. This responsibility includes, without limitation:

- (a) the performance of all repairs, maintenance, replacement, upgrading, capital Improvements, (whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary) necessary to maintain the Premises and the improvements thereon in good order, condition, and repair in a manner consistent with the operation of comparable facilities in the locale of the Park Area and in compliance with all Applicable Laws;
- (b) the replacement, as they become worn out or obsolete, of all FF&E;
- (c) the housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without altering the appearance of the Premises;
- (d) the repair or replacement in-kind of broken or worn out elements, parts or surfaces so as to keep the existing appearance of the Premises;
- (e) the scheduled inspections of all building systems on the Premises; and

(f) the maintenance of the grounds of the Premises in good condition, including, without limitation, regular grass mowing, managed lawn and ornamental plantings, and avoidance or removal of unsightly storage or parking of materials, equipment, or vehicles.

Any repair and maintenance actions that may result in Improvements to the Premises require the prior written approval of the Lessor.

## **10.2 Maintenance Plan**

If requested by the Lessor, the Lessee shall submit to the Lessor for its approval a Lessee Maintenance Plan satisfactory to Lessor. The plan, when approved by Lessor, shall become an Exhibit to this Lease without further action and the Lessee shall comply with its terms. The Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises.

## **10.3 Preservation Maintenance Plan**

If the Premises (or any part of the Premises) are Historic Property, the Lessee shall repair and maintain all portions of the Premises that are Historic Property through a Preservation Maintenance Plan prepared by the Lessee and approved by the Lessor as appropriate and consistent with the requirements of the Secretary's Treatment Standards and NPS 28. The Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises. The Lessee shall submit a proposed Preservation Maintenance Plan to the Lessor within thirty (30) calendar days of the Commencement Date. The Preservation Maintenance Plan, when approved by Lessor, shall become an Exhibit to this Lease without further action and the Lessee shall comply with its terms.

## **10.4 Maintenance Reserve Account**

(a) The Lessee shall establish and manage a Maintenance Reserve Account. The funds in the Maintenance Reserve Account shall be used to carry out, on a project basis, repair and maintenance needs of the Premises that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, sub floors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. The Lessee will carry out projects as the Lessor shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Lessor. No projects may be commenced until the Lessee receives written approval from the Lessor in accordance with Section 21 of this Lease.

(b) Projects paid for with funds from the Maintenance Reserve Account will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this Section shall lessen the responsibility of the Lessee to carry out the maintenance and repair of the Premises from funds other than those in the Maintenance Reserve Account.

(c) The Lessee shall establish the Maintenance Reserve Account within its accounting system. The Lessee shall debit to this account within fifteen calendar (15) days after the last day of each month during the Lease Term a sum equal to: \_\_\_\_\_ percent (\_\_\_\_\_% ) of the Lessee's gross revenues (as defined in Section \_\_\_\_ ) for the previous month. If the

Lessee fails to make timely debits to the account, the Lessor may terminate this Lease for default or may require the Lessee to post a bond in an amount equal to the estimated annual account debiting based on the preceding year's gross revenues. The Lessee shall periodically at times prescribed by the Lessor submit written reports to the Lessor containing such information as the Lessor may require concerning the Maintenance Reserve Account and the related activities of the Lessee.

(d) The balance in the Maintenance Reserve Account shall be available for projects in accordance with its purpose. For all expenditures made for each project from the Maintenance Reserve Account, the Lessee shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Lessor. Withdrawals from the account shall not be made without the Lessor's countersignature.

(e) Failure to expend Maintenance Reserve Account funds when directed by the Lessor shall be considered as a material breach of this Lease for which the Lessor may seek monetary damages and other legal relief, including, without limitation, termination of this Lease.

(f) Any Maintenance Reserve Account funds not duly expended by the Lessee as of the termination or expiration of this Lease shall be paid by the Lessee to the Lessor as additional Rent.

## **SECTION 11. TAXES**

The Lessee shall be solely responsible for the payment to the proper authority, when and as the same become due and payable, all taxes and assessments imposed by federal, state, or local agencies applicable to the Premises or the Lessee's activities on the Premises.

## **SECTION 12. UTILITIES**

The Lessee at its sole expense shall make all arrangements with appropriate utility providers (including the Lessor where applicable), for all utilities furnished to the Premises, including, without limitation, gas, electricity, other power, water, cable, telephone and other communication services, sewage, and waste removal. Any utility service provided by Lessor will be subject to the Lessor's established policies and procedures for provision of utility services to third parties.

## **SECTION 13. HAZARDOUS MATERIALS**

The Lessee shall comply with the following provisions concerning Hazardous Materials:

- (a) No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of from, on, about, under or into the Premises except in compliance with all Applicable Laws and as approved by the Lessor in writing;
- (b) The Lessee shall use, manage, treat, keep, store, release, discharge and dispose of its approved Hazardous Materials in accordance with all Applicable Laws. The Lessee is responsible for timely acquisition of any permits required for its Hazardous Materials and related activities and will be fully responsible for compliance with the provisions and conditions of such permits;

(c) If any Hazardous Materials Occurrence caused by Lessee results in any contamination of the Premises, other Park Area property or neighboring property, the Lessee shall promptly take all actions at its sole expense as are required to comply with Applicable Laws and to allow the Premises or such other property to be used free of any use restriction imposed under Applicable Laws as a result of the Hazardous Materials Occurrence. Except in cases of emergency, the Lessor's written approval of such actions shall first be obtained;

(d) Lessee at its expense shall be responsible for the abatement of Hazardous Materials in accordance with Applicable Laws in, on, or under the Premises as of the Commencement Date and thereafter; and

(e) If the Lessee discovers any unapproved Hazardous Materials in or on the Premises or becomes aware of a Hazardous Materials Occurrence related to the Premises, the Lessee shall immediately notify the Lessor.

## **SECTION 14. INSURANCE AND INDEMNIFICATION**

### **14.1 Insurance During the Lease Term**

At all times during the Lease Term and at the Lessee's sole expense, it shall obtain and keep in force for the benefit of the Lessee and Lessor the insurance coverages set forth in Exhibit C to this Lease under the terms and conditions of Exhibit C.

### **14.2 Insurance Requirements Modification**

If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, conditions, deductibles or self insurance retention, with respect to any of the insurance required by this Lease are insufficient for a prudent owner of property of the nature of the Premises, the Lessor may determine the proper and reasonable limits and extent of coverage, deductibles, conditions, and self insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this Section.

### **14.3 Disposition of Insurance Proceeds**

All insurance proceeds received by or payable with respect to damage or destruction of the Premises (except proceeds of insurance covering loss or damage of the Lessee's Personal Property), less actual expenses incurred in connection with their collection, shall be held by the Lessee in an interest bearing account, with all interest accrued thereon deemed proceeds of insurance for purposes of this Lease. However, if required by the Lessor, an insurance trustee acceptable to the Lessor shall hold such proceeds for application in accordance with this Lease.

### **14.4 Inadequate Insurance Coverage**

The Lessee's responsibilities under this Lease for the repair or replacement of the Premises assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible.

### **14.5 Indemnity**

The Lessee shall indemnify, defend, save and hold the United States of America, its employees, successors, agents and assigns, harmless from and against, and reimburse the United States of America for any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation expenses incurred in connection with or arising in any way out of this Lease, the use, occupancy or manner of use or occupancy of the Premises by the Lessee or any other person or entity, the design, construction, maintenance, or condition of any Improvements on the Premises, the condition of the Premises, and/or any accident or occurrence on the Premises from any cause whatsoever; provided, however, that the Lessee shall not be liable to the extent that the damages, expenses, claims or suits result from the willful misconduct or negligence of the United States of America, or its employees, contractors, or agents; provided, further, that the United States of America shall be liable only to the extent such claims are covered by the Federal Tort Claims Act (28 U.S.C. §2671 et seq.).

The provisions of this Section shall survive the Expiration Date or Termination Date of this Lease.

## **SECTION 15. DAMAGE OR DESTRUCTION**

### **15.1 Damage or Destruction; Duty to Restore**

If the Premises or any portion thereof are damaged or destroyed at any time during the Lease Term, one of the following will occur as directed by the Lessor:

- (a) the Lessee, subject to the prior written approval of the Lessor, shall as promptly as reasonably practicable and with all due diligence repair or replace the damaged or destroyed Premises to the condition that existed prior to the damage or destruction; or
- (b) the Lessor may terminate this Lease without liability and the Lessee shall pay to the Lessor as additional Rent the insurance proceeds resulting from the damaged or destroyed Premises.

### **15.2 No Termination; No Effect on Rental Obligation**

No loss or damage by fire or other cause resulting in either partial or total destruction of the Premises, the Improvements thereon, or any other property on the Premises shall operate to terminate this Lease except as provided in Section 15.1 of this Lease. No such loss or damage shall affect or relieve the Lessee from the Lessee's obligation to pay the Rent required by this Lease and in no event shall the Lessee be entitled to any prorated return or refund of Rent paid hereunder. Unless this Lease is terminated under Section 15.1, no such loss or damage shall relieve or discharge the Lessee from the payment of taxes, assessments, or other charges as they become due and payable, or from performance of the other terms and conditions of this Lease.

## **SECTION 16. LIENS**

### **16.1 No Power in Lessee to Create**

The Lessee shall have no power to take any action that may create or be the foundation for any lien, mortgage or other Encumbrance upon the reversion, fee interest or other estate of the Lessor or of any interest of the Lessor in the Premises, except as otherwise may be expressly approved by the Lessor in writing in accordance with the terms of this Lease.

### **16.2 Discharge of Liens by Lessee**

The Lessee shall not suffer or permit any liens known to the Lessee to stand against the Premises for any reason. If a lien is filed against the Premises, the Lessee shall cause it to be discharged of record within sixty calendar (60) days after notice to the Lessee of filing the lien. If the Lessee fails to discharge or contest the lien within this period and the failure shall continue for a period of fifteen calendar (15) days after notice by the Lessor, then, in addition to any other right or remedy of the Lessor, the Lessor may, but shall not be required, to procure the discharge of the lien either by paying the amount claimed to be due, by deposit in court, or by bonding. All amounts paid or deposited by the Lessor for any of these purposes, and all other expenses of the Lessor and all necessary disbursements in connection with them, shall become due and payable forthwith by the Lessee to the Lessor upon written demand therefore as additional Rent.

### **16.3 No Consent or Request by Lessor**

Nothing in this Lease shall be deemed to be or be construed in any way as constituting the consent or request of the Lessor, expressed or implied, by inference or otherwise, to any person, firm or corporation, for performance of any labor or the furnishing of any materials in connection with the Premises.

## **SECTION 17. ASSIGNMENTS AND ENCUMBRANCES**

### **17.1 Assignments**

The Lessee shall not effectuate an Assignment of this Lease, in whole or in part, or any real property on the Premises, nor Sublease the Premises to a Sublessee or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Lease, without the express prior written permission of the Lessor. Approval of any Assignment is in the discretion of the Lessor and in no event shall the Lessor grant an approval unless it is able to determine that the proposed assignee or Sublessee is financially and managerially capable of carrying out the terms of this Lease. The Lessor has an unconditional right to assign this Lease or any or all of its rights and obligations under it at any time.

With respect to proposed Assignments and without otherwise limiting the criteria upon which the Lessor may withhold its consent to any proposed Assignment, the Lessee shall furnish to the Lessor the following information:

- (a) all instruments proposed to implement the transaction;
- (b) a statement as to the existence of any litigation questioning the validity of the proposed transaction;
- (c) a description of the management qualifications and financial background of the proposed transferee, if any;
- (d) a detailed description of the financial aspects of the proposed transaction, including but not limited to, prospective financial forecast statements that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Lessor that terms of the transfer do not impede or interfere with the financial ability of the Lessee to perform the requirements of this Lease;

- (e) if the transaction may result in a Encumbrance on the Lessee's assets, full particulars of the terms and conditions of the Encumbrance; and
- (f) such other information as the Lessor may reasonably require.

The Lessor shall have the right to approve the form of any Assignment. Any consideration for transfers of leasehold interests (as such costs are approved by the Lessor) received by the Lessee from an assignee for or in connection with an assignment of this Lease, shall be payable to the Lessor.

## **17.2 Encumbrances**

The Lessee may not effectuate an Encumbrance on the Premises except with the prior written permission of the Lessor. Approval of any Encumbrance is in the discretion of the Lessor and in no event shall an Encumbrance be approved unless the Lessor is able to determine that it only grants its holder, in the event of a foreclosure, to assume the responsibilities of the Lessee under this Lease or to select a qualified new lessee subject to the written approval of the Lessor, and that it does not grant its holder any rights to alter or amend in any manner the terms and conditions of this Lease.

## **SECTION 18. DEFAULTS AND LESSOR'S REMEDIES**

### **18.1 Termination for Default**

The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least fifteen (15) calendar days in the case of monetary defaults and thirty (30) calendar days in the case of non-monetary defaults of the Lessor's intention to terminate if the default is not cured within the applicable time period. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the Premises shall terminate.

### **18.2 Bankruptcy**

The Lessor may terminate this Lease, in its discretion, in the event of a filing or execution of:

- (a) a petition in bankruptcy by or against the Lessee which is not dismissed within ninety calendar (90) days of its filing;
- (b) a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor;
- (c) an assignment for the benefit of creditors;
- (d) a petition or other proceeding against the Lessee for the appointment of a trustee, receiver or liquidator; or
- (e) the taking by any person of the leasehold created by this Lease or any part thereof upon execution, attachment or other process of law.

### **18.3 No Waiver**

No failure by the Lessor to insist upon the strict performance of any of the terms and conditions of this Lease or to exercise any right or remedy upon a default, and no acceptance by the Lessor of full or partial Rent during the continuance of any default shall constitute a waiver of any

default or of such terms and conditions. No terms and conditions of this Lease may be waived or modified except by a written instrument executed by the Lessor. No waiver of any default shall affect or alter this Lease, but each and every term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

#### **18.4 Lessor's Right to Cure Defaults**

If a default occurs under the terms of this Lease and the Lessee fails to correct the default within the applicable grace period, the Lessor may choose to correct the default (entering upon the Premises for such purposes if necessary), and the Lessor shall not be liable or in any way responsible for any loss, disturbance, inconvenience, or damage resulting to the Lessee as a result, and the Lessee shall pay to the Lessor upon demand the entire expense of the correction as additional Rent, including, without limitation, compensation to the agents, consultants and contractors of the Lessor and related expenses. The Lessor may act upon shorter notice or no notice at all if necessary in the Lessor's judgment to meet an emergency situation or governmental time limitation or to protect the Lessor's interest in the Premises.

### **SECTION 19. SURRENDER AND HOLDING OVER**

#### **19.1 Surrender of the Premises**

(a) On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property, and return the Premises, including the FF&E, to as good an order and condition as that existing upon the Commencement Date, or, if applicable, as that existing upon completion of any Improvements by the Lessee.

(b) For these purposes, the Lessor and Lessee shall prepare an Inventory and Condition Report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for Lessor's FF&E, or elements of the Premises shown to be lost, damaged or destroyed. Any such FF&E, or other elements of the Premises shall be either replaced or returned to the condition required under this Section by the Lessee, ordinary wear and tear excepted, or, at the election of the Lessor, reimbursement made therefor by the Lessee at the then current market value thereof.

#### **19.2 Holding Over**

This Lease shall end upon the Expiration Date or Termination Date and any holding over by the Lessee or the acceptance by the Lessor of any form of payment of Rent or other charges after such date shall not constitute a renewal of this Lease or give the Lessee any rights under this Lease or in or to the Premises.

### **SECTION 20. EQUAL OPPORTUNITY LAWS**

The Lessee and Lessee's Agents shall comply with the requirements of:

(a) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967;

(b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93-112 (as amended), which prohibits discrimination on the basis of disability and

requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals;

(c) 41 C.F.R. Chapter 60, which prescribes affirmative action requirements for government contractors and subcontractors;

(d) the Age Discrimination in Employment Act of December 15, 1967 (as amended);

(e) the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.; and

(f) all other Applicable Laws relating to nondiscrimination in employment and in providing facilities and services to the public. The Lessee shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

## **SECTION 21. NOTICES**

Except as otherwise provided in this Lease, any notice, consent or other communication required or permitted under this Lease shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the parties may designate by notice given in accordance with this Section):

If to the Lessor:

[Lessor's address and name of person to whom the notice should be addressed]

If to the Lessee:

[Lessee's address and name of person to whom the notice should be addressed]

## **SECTION 22. GENERAL PROVISIONS**

The following general provisions apply to this Lease:

(a) The Lessor is not for any purpose a partner or joint venture participant of the Lessee in the development or operation of the Premises or in any business conducted on the Premises. The Lessor under no circumstances shall be responsible or obligated for any losses or liabilities of the Lessee. The Lessee shall not publicize, or otherwise circulate, promotional or other material of any nature that states or implies endorsement of the Lessee or its services or products by the Lessor or any other governmental agency.

(b) This Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.

(c) This Lease provides no right of renewal or extension to the Lessee, nor does it provide the Lessee with the right to the award of a new lease upon termination or expiration of this Lease. No rights shall be acquired by virtue of this Lease entitling the Lessee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

- (d) The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Lessor shall have the right to terminate this Lease for Default.
- (e) In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this Lease, and this Lease shall be construed as if the invalid provisions had not been contained in this Lease.
- (f) All Exhibits that may be referenced in this Lease are hereby attached to and incorporated in this Lease, except as specifically provided herein.
- (g) Time is of the essence to this Lease and all of its terms and conditions.
- (h) The laws of the United States shall govern the validity, construction and effect of this Lease.
- (i) This Lease constitutes the entire agreement between the Lessor and Lessee with respect to its subject matter and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect except by an instrument in writing signed by the Lessor and Lessee.
- (j) The voluntary sale or other surrender of this Lease by the Lessee to the Lessor, or a mutual cancellation, or the termination by the Lessor pursuant to any provision of this Lease, shall not work a merger, but, at the option of the Lessor, shall either terminate any or all existing subleases hereunder or operate as an Assignment to the Lessor of any or all subleases.
- (k) If more than one Lessee is named in this Lease, each Lessee shall be jointly and severally liable for performance of the obligations of this Lease.
- (l) Any and all remedies available to Lessor for the enforcement of the provisions of this Lease are cumulative and are not exclusive, and Lessor shall be entitled to pursue either the rights enumerated in this Lease or remedies authorized by law, or both. Lessee shall be liable for any costs or expenses incurred by Lessor in enforcing any term of this Lease, or in pursuing legal action for the enforcement of Lessor's rights, including, but not limited to, court costs.
- (m) Costs for which the Lessee may be obligated may also include but are not limited to the cost of park services and management necessary in connection with Lessee's activities. Nothing shall prevent the Lessor from recovering costs incurred in connection with any activity undertaken by Lessee.
- (n) The Lessee shall not construct new buildings or structures on the Premises, except that, with the prior written approval of the Lessor, the Lessee may construct minor additions, buildings and/or structures determined by the Lessor to be necessary for support of the uses authorized by this Lease.
- (o) Nothing contained in this Lease shall be construed as binding the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations. Nothing in this Lease shall be construed as preventing the

cancellation of this Lease by the Lessor in the exercise of sovereign authority otherwise provided by Applicable Laws.

(p) The Lessee shall ensure the Lessor and his/her representative has keys to the facility or that locks are installed upon the facility as NPS sees fit, and that nothing impedes access to the facility or any government land and improvements governed by this Agreement. The Lessee agrees that Lessor or Lessor's representatives may enter the Premises at reasonable hours to inspect the property. When possible, Lessor will give Lessee 24 hours' notice of the date, time, and reason for the visit. In emergencies, Lessor may enter the Premises without notice.

**IN WITNESS WHEREOF**, the Regional Director, \_\_\_\_\_ Region, National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Interior, as Lessor; and the Lessee have executed this Lease by proper persons thereunto duly authorized as of the date heretofore written.

**LESSOR**  
**THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE**

\_\_\_\_\_  
**Michael A. Caldwell**  
**Regional Director**  
**Northeast Region**

\_\_\_\_\_  
**Date**

**LESSEE**

( \_\_\_\_\_ )  
**By** \_\_\_\_\_  
**Title** \_\_\_\_\_

\_\_\_\_\_  
**Date**

**EXHIBIT A: Premises Map/Plat/Description**

**EXHIBIT B: Inventory and Condition Report  
SAMPLE**

<b>Asset</b>	<b>Description: Location #____Asset List also identified as Building_____in Location of Park</b>	<b>Condition</b>	
<b>1078676</b>	<b>Roofing System</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1078678</b>	<b>”Exterior System</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1078680</b>	<b>Exterior Doors System</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1078682</b>	<b>Window System</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1078683</b>	<b>Utility System</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1078690</b>	<b>Interior System</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1078691</b>	<b>Electrical System</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1130836</b>	<b>Special Structures</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>1130838</b>	<b>Special Structures</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210719</b>	<b>Alarm System, Fire 1201 SF</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210720</b>	<b>Generic Electrical</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210721</b>	<b>Generic Electrical</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210722</b>	<b>Electric Transmission/Distribution</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210723</b>	<b>Boiler</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210724</b>	<b>Domestic Water Distribution</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210725</b>	<b>Plumbing Fixture</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210726</b>	<b>Plumbing Fixture</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210727</b>	<b>Plumbing Fixture</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210728</b>	<b>Interior Finish</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210729</b>	<b>Interior Finish</b>	<b>Good</b>	<b>Accepted As Is</b>
<b>210730</b>	<b>Interior Finish</b>	<b>Good</b>	<b>Accepted As Is</b>

## **EXHIBIT C: Insurance Requirements**

During the term of this Lease, the Lessee shall maintain the following insurance coverage (where applicable as determined by the Lessor) under the following general terms and conditions and under such specific terms and conditions as the Lessor may further require with respect to each particular insurance policy.

### **1. Types of Insurance (Non-Construction)**

(a) Property Insurance - An all risk or special form, including fire, vandalism and malicious mischief insurance. The amount of such insurance shall be the full insurable value of the Premises. All such policies shall specify that proceeds shall be payable whether or not any damaged or destroyed improvements are actually rebuilt. All such policies shall waive any requirement that a building or structure be replaced at its original site.

(b) Boiler and Machinery Insurance – At full replacement cost. The policy shall specify that proceeds shall be payable whether or not any damaged or destroyed improvements are actually rebuilt. The policy shall include an endorsement that waives any provision of the policy that requires a building or structure to be replaced at its original site, provided that, such endorsement shall not operate to increase the insurance company's liability under the policy.

(c) Worker's Compensation and Employer's Liability Insurance - Worker's compensation insurance in the statutory amounts and coverage required under worker's compensation, disability and similar employee benefit laws applicable to the Premises and to the Lessee's use and occupancy of the Premises; and employer's liability insurance, with limits of not less than \_\_\_\_\_ (\$\_\_\_\_\_) for bodily injury per incident and \_\_\_\_\_ (\$\_\_\_\_\_) aggregate, or such higher amounts as may be required by law.

(d) General Liability - Comprehensive Farm Liability and/or Commercial General Liability through one or more primary and umbrella liability policies against claims for bodily injury and property damage occurring on the Premises, the improvements thereon, or the streets, curbs or sidewalks adjoining the Premises, with such limits as may be required by the Lessor, but in any event not less than \_\_\_\_\_ (\$\_\_\_\_\_) per incident and \_\_\_\_\_ (\$\_\_\_\_\_) aggregate for the Premises. Such insurance shall insure the performance by the Lessee of its indemnity obligations under this Lease.

(e) Business Interruption and Extra Expense Insurance - Business interruption and extra expense to cover the loss of income and continuation of fixed expenses in the event of damage to or loss of the Premises, including, without limitation and, with respect to the interests of the Lessor, the loss (or reduction) of Rent payments to the Lessor by the Lessee. Coverage amounts shall be as required by the Lessor but in no event less than \_\_\_\_\_ (\$\_\_\_\_\_) per incident and \_\_\_\_\_ (\$\_\_\_\_\_) in the aggregate.

(f) Liquor Liability - Proof of Liquor Liability is required, if alcohol is to be served or made available at the Premises. The LESSEE must provide coverage for bodily injury and property damage including damages for care, loss of services, or loss of support arising out of the selling, serving, or furnishing of any alcoholic beverage as follows: \$2,000,000 Each Common Cause Limit/ \$3,000,000 Aggregate Limit.

(g) Other - All other insurance that the Lessee should maintain to adequately protect the Premises, Lessor, and Lessee.

## **2. Insurance During Construction**

At all times during Construction, the Lessee at its sole expense, shall obtain and keep in force for the benefit of the Lessee and Lessor the following insurance coverages:

- (a) If requested by Lessor at any time, performance and payment bonds approved by the Lessor, which bonds shall cover payment of all obligations arising under all contracts let in connection with a Construction and guaranteeing performance and payment under the applicable contracts, and payment in full of all claims for labor performed and materials supplied under such contracts. The bonds shall be issued by a responsible surety company, licensed to do business in the state where the Park Area is located, in an amount not less than the amount of the respective contracts, including without limitation, amounts for cost overruns, price increases, change orders, forced delays and the like, and shall remain in effect until the entire work under the contracts is completed; and
- (b) To the extent not covered by other property insurance maintained by the Lessee, comprehensive "all risk" or "special form" builder's risk insurance, including vandalism and malicious mischief, covering the Construction, all materials and equipment stored at the Premises and furnished under a construction contract, and all materials and equipment that are in the process of fabrication at the Premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment, has passed to the Lessee, such insurance to be written on a completed value basis in an amount not less than the full estimated replacement cost of the Construction.

## **3. Conditions of Insurance**

- (a) The policy or policies required under this Exhibit shall provide that in the event of loss, the proceeds of the policy or policies shall be payable to the Lessee to be used solely for the repair or replacement of the property damaged or destroyed, as approved and directed by the Lessor, with any balance of the proceeds not required for repair or replacement to be payable to the Lessor; provided, however, that the insurer, after payment of any proceeds to the Lessee, will have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee.
- (b) All property and liability insurance policies shall name the United States of America as an additional insured.
- (c) All of the insurance required by this Exhibit and all renewals shall be issued by one or more companies of recognized responsibility licensed to do business in the state in which the Park Area is located with a financial rating of at least a Class B+ (or equivalent) status, as rated in the most recent edition of Best's Insurance Reports (or equivalent) or as otherwise acceptable to the Lessor.
- (d) All insurance policies shall provide that such policies shall not be cancelled, terminated or altered without thirty (30) days prior written notice to the Lessor. The Lessee must provide to the Lessor a copy of each policy and a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in

full force and effect on or before the Commencement Date, and annually thereafter. The Lessee shall maintain all policies provided throughout the Lease Term and the Lessee shall renew such policies before the expiration of the term of the policy.

(e) If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, deductibles or self insurance retention, with respect to any of the insurance required by this Exhibit are insufficient for a prudent owner of property of the nature of the Premises, the Lessor may determine the proper and reasonable limits and extent of coverage, deductibles and self insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this Exhibit.

(f) The Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible.

(g) The Lessee and Lessee's Agents shall not do anything, or permit anything to be done, in or about the Premises or on adjacent or nearby property that would invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises or result in a refusal by insurance companies of good standing to insure the Premises in the amounts required under this Exhibit.